

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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LORNA GERIS, Individually, and as  
Personal Representative of the Estate of  
FRED GERIS, and as Parent and Natural  
Guardian of Christopher, Matthew, and  
Kristine Geris, and the WORKPLACE  
SAFETY & INSURANCE BOARD of  
Ontario, as Subrogee

**NOTICE OF MOTION**

Civil Docket No.: 1:07-CV-376

Plaintiffs,

v.

DiSILVA TAUNTON EXPRESS, INC.  
and JOSE L. MARTE,

Defendants.

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**PLEASE TAKE NOTICE** that upon the accompanying affidavit of Paul Morrison-Taylor, sworn to on January 6, 2014, with exhibits, and the accompanying memorandum of law dated January 6, 2014; and all the papers and proceedings herein, plaintiffs will move this Court before the Hon. John T. Curtin, United States District Judge for the Western District of New York, at the United States Courthouse, located at 2 Niagara Square, Buffalo, New York, 14202, at a date and time to be determined by the Court:

1. For an order, pursuant to Federal Rules of Civil Procedure 15(b), dismissing defendants' second amended answer in its entirety; or, in the alternative, pursuant to Federal Rules of Civil Procedure 12(f), striking paragraphs 22 and 23 from defendants' second amended answer as being insufficient defenses and unreasonably prejudicial to plaintiffs; and

2. Awarding such other and further relief as the Court deems just and proper.

**PLEASE TAKE FURTHER NOTICE** that if defendants intend to serve reply papers on this motion, they must do so in accordance with the scheduling order set by the Court in this action.

DATED: Buffalo, New York  
January 6, 2014

PHILLIPS LYTLE LLP

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